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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

EX PARTE

Paul Gallant  
Office of Commissioner Tristani  
Federal Communications Commission  
445 12th Street, SW  
Room 8C-302

Re: CC Docket No. 96-98

Dear Mr. Gallant:

Thank you for meeting with Mike Katzenstein and me regarding the unbundling of sub-loops as UNEs. We have now met with four of the five Commissioners' offices and with the CCB Policy Division on this issue, and we expect, as the above-referenced item on remand moves through the Commission, to continue to contribute to the Commission's consideration of this important issue. In our view, no single regulatory initiative will facilitate immediate facilities-based residential local telephone competition faster than the designation of MDU distribution wire as a UNE. To summarize:

- In Iowa Utilities Board, the Court directed the FCC to identify UNEs by reference to whether they are "necessary" and whether their absence would "impair" a carrier's ability to provide service. The Court analogized to competitive "light-bulb changing" — the unbundling rules should provide CLECs with a ladder tall enough to reach the light fixture, but they need not provide a ladder even "one-half inch taller."
- In concurrence, Justice Breyer explained that sharing network elements entails costs and the "more complex the facilities, the more central their relation to the firm's managerial responsibilities, [and] the

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more extensive the sharing demanded, the more likely these costs will become severe." Thus, the benefits of increased competition using shared facilities outweigh the costs only when the sharing involves "readily separable and administrable physical facilities."

- The one clear and incontestable UNE is the local loop, *i.e.*, the "ladder." If ILECs are required to provide CLECs with access to the whole ladder, *a fortiori*, they cannot be allowed to deny CLECs the "final rung" when a CLEC's own ladder is one-step too short.
- In the residential market in MDU properties, facilities-based CLECs are poised to provide service. Only one barrier remains — access to the "final rung" of ILEC loop facilities on MDU property. Because ILECs generally will not allow CLECs to cross-connect at the nearest street cabinet or at a single point on an MDU property, CLECs are faced with overbuilding on-property distribution or leasing entire loops in order to reach individual subscribers in MDUs. The costs and delays associated with either of these approaches are prohibitive.
- Identifying the sub-loop "rung" as a UNE would allow CLECs to bring their own networks close to the end-users, provide all of their own services and network intelligence, and compete not only on price, but also on quality, reliability, and service. In addition, sub-loop unbundling would ease collocation congestion by allowing facilities-based competitors to move their point of connection with the ILEC network away from the end-office.
- Thus, the Commission should require ILECs to establish a single point of demarcation at an MDU property line (or at a nearby street cabinet) at which networks may be cross connected. The costs of any network reconfiguration required should be shared. The sub-loop facilities on the property-side of the demarcation point then should be made available as UNEs.

The practical impact of this approach can be illustrated by reference to OpTel. OpTel has installed its own Lucent 5ESS digital switches, which it uses in conjunction with its other network facilities, to provide integrated voice, video, and data services. OpTel's networks alone now pass approximately 500,000 units nationwide. Although OpTel provides its own switching facilities and feeder network, in most cases it is dependent upon the ILEC for the "last 100 feet" of distribution network in order to bring its telephone service option to residents of any given unit.

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To continue the analogy begun by the Supreme Court, OpTel brings to the competitive market its own ladder, its own service technician, and its own light bulb. The competitive ladder, though, is not quite tall enough to reach the light fixture; it is one rung short. If OpTel's technician is allowed to use the whole ILEC ladder in order to provide a competitive light-bulb changing service, she should be allowed to use only the last rung of that ladder — it is no less "necessary" than the whole and the failure to provide it will no less "impair" her ability to reach the light fixture.

By identifying sub-loops as UNEs, the Commission would, within a very short time, make competitive telephone choices available to half-a-million homes passed by OpTel's networks alone. And that is just the beginning.

Once again, thank you for your time. I look forward to working with you to make local telephone competition a reality.

Sincerely,



W. Kenneth Ferree  
Attorney for OpTel, Inc.

cc: Magalie R. Salas, Secretary